

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

C.A. NO. 04-40114-FDS

TIMOTHY L. LaFRENIER,

Plaintiff

v.

MARY ANNE KINIREY, DANIEL  
MORRISON, The CHIEF OF POLICE "John  
Doe" and the TOWN OF TOWNSEND,

Defendants

ATTACHMENTS TO DEFENDANTS' L.R.  
56.1 STATEMENT OF MATERIAL FACTS  
OF RECORD AS TO WHICH THERE IS  
NO GENUINE ISSUE TO BE TRIED

**Attachments A through F to Defendants' L.R. 56.1 Statement of  
Material Facts of Record as to Which There is no Genuine Issue to be Tried  
are to be filed by First Class Mail with the Court on January 27, 2006.**

DEFENDANTS,

By their attorneys,

/s/ Joseph L. Tehan, Jr.

Joseph L. Tehan (BBO# 494020)

Jackie Cowin (BBO# 655880)

Kopelman and Paige, P.C.

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272466/METG/0549

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document  
was served upon the attorney of record for each other  
party by (hand) (mail) on 1/27/06

jc

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DISTRICT OF MASSACHUSETTS

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TIMOTHY L. LaFRENIER,

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MARY ANNE KINIREY, DANIEL  
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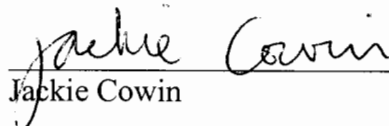
Defendants

AFFIDAVIT OF JACKIE COWIN

I, JACKIE COWIN, under oath do hereby depose and state as follows:

1. I am licensed to practice law in the Commonwealth of Massachusetts and in the United States District Court for the District of Massachusetts, and am an associate at the law firm of Kopelman and Paige, P.C.
2. I was involved in preparing the Defendants' Motion for Summary Judgment in the above-captioned case.
3. Each of the deposition excerpts attached as Exhibits to this affidavit are true and accurate copies of pages from the transcript of the referenced deposition.

Signed under the pains and penalties of perjury this 24th day of January, 2005.

  
Jackie Cowin

## **EXHIBIT A**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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TIMOTHY L. LaFRENIER, :  
Plaintiff :  
 :  
VS. : Civil Action  
 : No. 04-40114-FDS  
MARY ANNE KINIREY, :  
DANIEL MORRISON, THE CHIEF OF :  
POLICE, "JOHN DOE," AND THE :  
TOWN OF TOWNSEND, :  
Defendants :  
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DEPOSITION OF **TIMOTHY L. LaFRENIER**,  
taken on behalf of the Defendants, pursuant to the  
applicable provisions of the Massachusetts Rules of  
Civil Procedure, before Linda J. Modano, CSR No.  
121093, a Registered Professional Reporter and Notary  
Public in and for the Commonwealth of Massachusetts,  
at the Offices of Kopelman & Paige, P.C.,  
31 St. James Avenue, Boston, Massachusetts, on  
Wednesday, July 20, 2005, commencing at 10:00 a.m.

APPEARANCES:

JOSEPH L. TEHAN, JR., ESQ., of Kopelman & Paige,  
P.C., 31 St. James Avenue, Boston, Massachusetts,  
02116-4102, for the Defendants.

SEAN J. GALLAGHER, ESQ., 74 Elm Street, Worcester,  
Massachusetts, 01609, for the Plaintiff.

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1 with me.

2 Q. Let me stop you there please. As I asked you

3 a moment ago, would you give me the first name and

4 address of Doctor Ervin and spell his last name?

5 A. His address is in Westminster, Mass. His

6 first name I cannot remember. Ervin is E R V I N.

7 Q. What is his specialty?

8 A. Ears, nose and throat doctor.

9 Q. What has Doctor Ervin told you in that

10 regard?

11 A. He -- I shake my head because there was a lot

12 of talk in regards to the Meniere's and the symptoms,

13 but there was nothing he could really do at this

14 point.

15 But we did some work as far as the

16 middle ear. There was a little thing placed in there

17 to open it up for pressure and so forth to see if

18 that would alleviate some symptoms.

19 Q. I appreciate your response. The actual

20 question was, though, has Doctor Ervin ever told you

21 that your arrest has made your Meniere's worse.

22 MR. GALLAGHER: Objection to the form of

23 that.

38

1 Q. You could answer, sir.

2 MR. GALLAGHER: Yes. I'm sorry.

3 A. This is all new to me.

4 Q. No judge to rule on it so --

5 MR. GALLAGHER: I'm sorry about that.

6 A. I'll say no.

7 Q. Is it accurate to say that prior to your

8 arrest on June 15, 2001, you were afflicted with

9 depression?

10 A. They were basically telling me that. I

11 didn't feel that.

12 Q. When did a doctor first diagnose you as being

13 depressed?

14 A. Well, when I saw Doctor Danlevich, the doctor

15 in Worcester, he says, I'm not saying you're

16 depressed but along with this type of diagnosis,

17 cervical radiculopathy, it's not unusual that

18 depression does fit into it based on the symptoms

19 associated.

20 So he recommended at that point that I

21 try -- I forget the name of the actual pill, but I

22 declined because I said I was fine.

23 Q. Now, once again, please, would you spell the

39

1 last name of that doctor and add his first name and

2 address.

3 A. I forget his first name. Danlevich.

4 D A N L E V I C H, I believe.

5 Q. What town did you see him in?

6 A. Health Alliance of Fitchburg. I mean

7 Leominster, Mass.

8 Q. When did Doctor Danlevich raise the issue of

9 depression with you?

10 A. At that initial visit with him.

11 Q. I appreciate that. When was that?

12 A. I cannot remember that exact date.

13 Q. Certainly it did predate --

14 A. It was previous to the incident in Townsend.

15 Q. Thank you. Now, have you ever taken

16 medication for depression?

17 A. Yes.

18 Q. And was that a drug called Klonopin?

19 A. It wasn't really for depression. It was --

20 Now I'm catching myself. I was trying to think about

21 the drugs associated or for the Meniere's symptoms.

22 That was in relation to the Meniere's to

23 help with the ringing, because the ringing --

40

1 sometimes the Klonopin can bring the sound down and

2 alleviate some of those symptoms.

3 Q. Thank you. Why don't I ask you this. On

4 June 15, 2001 what medications were you taking?

5 A. None at that point.

6 Q. None. So you ingested no medications that

7 day, correct?

8 A. For a week previous to that I had stopped

9 taking Klonopin because of my feeling sick and I

10 didn't want to take it along with the Vick's Nyquil

11 and everything for the cold symptoms and so forth.

12 Q. I'll get to that in a minute. So your answer

13 is that on the date June 15, 2001 you were on no

14 medication of any type?

15 A. None.

16 Q. I should ask you as well today, are you on

17 any medications?

18 A. No.

19 Q. Fine. Were you prescribed at some point some

20 drug other than Klonopin for depression?

21 A. Serzone.

22 Q. Can you spell that?

23 A. S E R Z O N E, I believe.

<p style="text-align: right;">41</p> <p>1 Q. Who prescribed that to you?</p> <p>2 A. That was -- What was his name? I cannot</p> <p>3 remember his name right now.</p> <p>4 Q. When were you prescribed that drug?</p> <p>5 A. That was years back. Around 98 maybe or</p> <p>6 something.</p> <p>7 Q. When did you stop taking it?</p> <p>8 A. About maybe six months later.</p> <p>9 Q. Before 2000 certainly?</p> <p>10 A. Yuh, I would say so.</p> <p>11 Q. Have you ever been prescribed any other</p> <p>12 medication for depression?</p> <p>13 A. No.</p> <p>14 Q. Have you ever been prescribed any other drug</p> <p>15 for any other emotional or mental health issue?</p> <p>16 A. No.</p> <p>17 Q. Have you ever taken any mental health</p> <p>18 therapy?</p> <p>19 A. Yes.</p> <p>20 Q. With whom did you do so?</p> <p>21 A. That was as an outpatient at Health Alliance</p> <p>22 Hospital in Fitchburg.</p> <p>23 Q. And who was your clinician?</p>	<p style="text-align: right;">43</p> <p>1 you seen any doctor for that condition?</p> <p>2 A. No.</p> <p>3 Q. Were you self-treating in any way?</p> <p>4 A. Yes. I was using Vick's -- I believe Vick's</p> <p>5 Nyquil gelcaps to help alleviate the coughing and so</p> <p>6 forth.</p> <p>7 Q. What was the extent of your consumption?</p> <p>8 A. I was on that for at least the week -- all</p> <p>9 the week prior to that incident.</p> <p>10 Q. That's part of the extent. How about the</p> <p>11 daily consumption?</p> <p>12 A. Only at night I needed it. That's the only</p> <p>13 time I took it.</p> <p>14 Q. Were you staying within the prescribed</p> <p>15 dosages?</p> <p>16 A. Absolutely.</p> <p>17 Q. And do I understand that you stopped the</p> <p>18 Klonopin while you were taking the Nyquil?</p> <p>19 A. Yes.</p> <p>20 Q. Was that at the recommendation of any doctor?</p> <p>21 A. No.</p> <p>22 Q. Your choice.</p> <p>23 A. It was my choice.</p>
<p style="text-align: right;">42</p> <p>1 A. I cannot think of her name right now.</p> <p>2 Q. When did you take that therapy?</p> <p>3 A. That was around the same time as the Serzone</p> <p>4 in 98. I believe that's the date. I'm not quite</p> <p>5 exactly sure.</p> <p>6 Q. As a result of taking that medication and the</p> <p>7 therapy that you took did you feel somewhat better at</p> <p>8 that point?</p> <p>9 A. Somewhat.</p> <p>10 Q. Have you taken -- Strike that. Have you been</p> <p>11 prescribed by any physician any drug for your</p> <p>12 emotional state after or as a result of your arrest</p> <p>13 on June 15, 2001?</p> <p>14 A. No.</p> <p>15 Q. Have you taken any mental health therapy</p> <p>16 since that date?</p> <p>17 A. No.</p> <p>18 Q. As I understand it, sir, for roughly a week</p> <p>19 prior to your arrest on June 15, 2001, you had a bad</p> <p>20 head cold, is that correct?</p> <p>21 A. It's more than a week. I had been sick for</p> <p>22 at least two weeks, pushing three.</p> <p>23 Q. Thank you. And prior to June 15, 2001 had</p>	<p style="text-align: right;">44</p> <p>1 Q. What was the basis for that choice?</p> <p>2 A. I didn't want any interactions or anything</p> <p>3 associated with the medication that I was trying to</p> <p>4 alleviate with the cold.</p> <p>5 Q. As a result of stopping the Klonopin and</p> <p>6 taking the Nyquil, just as a layperson, did you</p> <p>7 observe any change in your emotional state?</p> <p>8 A. It was hard to perceive any change because of</p> <p>9 the way I was feeling. I was very ill, very weak,</p> <p>10 very tired. Not getting much sleep from the coughing</p> <p>11 and everything, the fever, chills associated with the</p> <p>12 way I was feeling.</p> <p>13 Q. Did it add to your Meniere's symptoms?</p> <p>14 A. At that point I was very lethargic but I</p> <p>15 would have to say no.</p> <p>16 Q. And when you say at that point, are we</p> <p>17 talking about roughly the week prior to your arrest?</p> <p>18 A. Yes.</p> <p>19 Q. Was your illness keeping you from sleeping</p> <p>20 properly?</p> <p>21 A. Yes, definitely.</p> <p>22 Q. Can you recall how many hours sleep a night</p> <p>23 you were getting during that week prior to June 15,</p>



<p style="text-align: right;">45</p> <p>1 2001?</p> <p>2 A. If I was averaging two to three hours, that</p> <p>3 was good.</p> <p>4 Q. Did you continue to work at Hewlett Packard</p> <p>5 through the illness?</p> <p>6 A. Yes.</p> <p>7 Q. If I understand correctly, prior to June 15,</p> <p>8 2001, however, you hadn't conferred with a physician</p> <p>9 about these symptoms, is that true?</p> <p>10 A. I called my doctor that week previous to that</p> <p>11 and they recommended an over-the-counter cold</p> <p>12 medication which I did not -- I took the Vick's</p> <p>13 Nyquils instead and they said to get something else</p> <p>14 but I can't remember exactly what it was called.</p> <p>15 Q. Did you apprise your doctor that you were</p> <p>16 taking the Nyquil?</p> <p>17 A. I never personally talked to my doctor. I</p> <p>18 just talked to I believe it was the nurse</p> <p>19 practitioner that was there on the phone.</p> <p>20 Q. Did you tell that nurse practitioner that you</p> <p>21 were taking the Nyquil?</p> <p>22 A. Yes. Yes.</p> <p>23 Q. And did you tell her that you had</p>	<p style="text-align: right;">47</p> <p>1 Route 13, that's when I don't remember anything.</p> <p>2 Q. Let me ask you this. Do you have any memory</p> <p>3 of waking up and going to work that day?</p> <p>4 A. Yes.</p> <p>5 Q. And what did you do when you woke up?</p> <p>6 A. I got dressed, showered, shaved, and</p> <p>7 continued to go to work.</p> <p>8 Q. Did you eat anything for breakfast?</p> <p>9 A. No. Not that morning.</p> <p>10 Q. Do you usually take a breakfast?</p> <p>11 A. Not too much. Just usually a drink or</p> <p>12 something.</p> <p>13 Q. Do you recall the ride to work?</p> <p>14 A. Yes.</p> <p>15 Q. Anything unusual happen on the ride to work?</p> <p>16 A. Around that time frame I -- it's not unusual</p> <p>17 but I did have my daughter's car as opposed to my</p> <p>18 vehicle. I don't know how important that may be.</p> <p>19 Q. Was that a Pontiac LeMans?</p> <p>20 A. Yes.</p> <p>21 Q. What year was that?</p> <p>22 A. Oh, I forget the exact year, sir.</p> <p>23 Q. Apart from that you were driving a different</p>
<p style="text-align: right;">46</p> <p>1 discontinued the Klonopin?</p> <p>2 A. No.</p> <p>3 Q. Has any doctor told you or opined that the</p> <p>4 medication that you were on, the Nyquil, and the</p> <p>5 medication that you were off, the Klonopin,</p> <p>6 contributed in any fashion to your behavior on June</p> <p>7 15, 2001?</p> <p>8 A. I believe there was a letter that my primary,</p> <p>9 Doctor Scornavacca, had wrote in relation to that</p> <p>10 question and explained in a little more detail what</p> <p>11 he thought -- how it would react at that point.</p> <p>12 Q. Was that a letter that you requested from him</p> <p>13 in connection with your criminal trial?</p> <p>14 A. Yes.</p> <p>15 Q. Directing your attention to June 15, 2001,</p> <p>16 can we agree that that was the date of your arrest?</p> <p>17 A. Yes.</p> <p>18 Q. By the Townsend police?</p> <p>19 A. Yes.</p> <p>20 Q. And did it occur some time after 1 o'clock in</p> <p>21 the afternoon?</p> <p>22 A. I know I left work around noontime. I'm not</p> <p>23 sure the exact time. On the way home when I hit</p>	<p style="text-align: right;">48</p> <p>1 vehicle, was there anything problematic about the</p> <p>2 drive to work?</p> <p>3 A. No.</p> <p>4 Q. How did you feel going to work that day?</p> <p>5 A. Very sick still, very tired. Lethargic. Not</p> <p>6 feeling well at all.</p> <p>7 Q. Did you do any work that day?</p> <p>8 A. Yes.</p> <p>9 Q. What type of work did you do?</p> <p>10 A. Stock keeping.</p> <p>11 Q. And is that the same type of work that you</p> <p>12 described to me that you generally did at Digital,</p> <p>13 Compaq, and Hewlett Packard?</p> <p>14 A. That changed at the very end before I left.</p> <p>15 They put me in another area. I just remembered that.</p> <p>16 Q. Thank you. When did you get a different</p> <p>17 assignment at those computer companies from which you</p> <p>18 already told me?</p> <p>19 A. I would have to say it was maybe a year</p> <p>20 before I took the actual buyout package.</p> <p>21 Q. 2001 to 2002?</p> <p>22 A. Probably, yes, around 2001, 2002.</p> <p>23 Q. What was the change in your duties at that</p>

<p style="text-align: right;">49</p> <p>1 point?</p> <p>2 A. I was receiving material to be put into stock</p> <p>3 and basically inventorying everything to make sure it</p> <p>4 was on balance accuracies.</p> <p>5 Q. I didn't understand your last phrase. It</p> <p>6 seems like a technical term. What does it mean? To</p> <p>7 ensure what?</p> <p>8 A. To make sure that everything that was put</p> <p>9 into stock was exactly the counts that it was</p> <p>10 supposed to be in regards to balance accuracy.</p> <p>11 Q. What's a balance accuracy?</p> <p>12 A. If you go in and look in your computer and</p> <p>13 there's supposed to be X amount of items there, if</p> <p>14 you notice there isn't and you're adding to it,</p> <p>15 you've got to correct the issue and make sure the</p> <p>16 balance accuracies are up to date also.</p> <p>17 Q. Did you do that type of work on the morning</p> <p>18 of June 15, 2001?</p> <p>19 A. Yes.</p> <p>20 Q. What time did you leave work?</p> <p>21 A. It was around 11 or a little after from what</p> <p>22 I remember.</p> <p>23 Q. And certainly that was cutting your workday</p>	<p style="text-align: right;">51</p> <p>1 Q. Now, when were you first prescribed drugs for</p> <p>2 infection?</p> <p>3 A. I really wasn't prescribed -- I don't know if</p> <p>4 you caught that. I'm not an expert as far as</p> <p>5 nystatin.</p> <p>6 Q. When were you prescribed nystatin?</p> <p>7 A. Roughly a few times during the year previous</p> <p>8 to the incident. Let's say 2000. Around there.</p> <p>9 Q. That was by your primary doctor?</p> <p>10 A. Yes.</p> <p>11 Q. When prior to June 15, 2001 had you last</p> <p>12 taken nystatin?</p> <p>13 A. I can't remember the exact date.</p> <p>14 Q. I appreciate that. Can you -- Would it help</p> <p>15 you if I asked you, was it more than a month prior?</p> <p>16 A. I can't remember exactly when I had taken</p> <p>17 that.</p> <p>18 Q. You took no nystatin on June 15, 2001, true?</p> <p>19 A. No. I wasn't on any of that, sir.</p> <p>20 Q. Were you on any drug for the coating on your</p> <p>21 tongue on June 15, 2001?</p> <p>22 A. No.</p> <p>23 Q. As I understand correctly then, you had a</p>
<p style="text-align: right;">50</p> <p>1 short, true?</p> <p>2 A. Yes.</p> <p>3 Q. Why did you leave early?</p> <p>4 A. I was going to a doctor's appointment.</p> <p>5 Q. To which doctor were you headed?</p> <p>6 A. He was a bacterial specialist. I'm not sure</p> <p>7 of his name. I cannot remember it but it was in</p> <p>8 Fitchburg.</p> <p>9 Q. Who had referred you to that bacterial</p> <p>10 specialist?</p> <p>11 A. My primary, Doctor Scornavacca.</p> <p>12 Q. On what basis, if he told you?</p> <p>13 A. They weren't sure at that point why I have</p> <p>14 this white film, which I still have today, on my</p> <p>15 tongue and I was on different types of medication in</p> <p>16 regards to a yeast infection, body infections, to see</p> <p>17 if it would alleviate the symptoms.</p> <p>18 But at that point Doctor Scornavacca had</p> <p>19 mentioned to me, I'll be sending you to this</p> <p>20 bacterial specialist to have him take a look at it</p> <p>21 because this doesn't seem to be working, whatever is</p> <p>22 going on, and I'd like to have him have a look at you</p> <p>23 also.</p>	<p style="text-align: right;">52</p> <p>1 prescheduled appointment with a specialist for the</p> <p>2 coating on your tongue on June 15, 2001, is that</p> <p>3 true?</p> <p>4 A. Yes.</p> <p>5 Q. And you had left work for that appointment?</p> <p>6 A. Yes, sir.</p> <p>7 Q. To your understanding was that appointment</p> <p>8 also going to address your ongoing viral or cold</p> <p>9 symptoms?</p> <p>10 A. It wasn't really related at that time.</p> <p>11 Q. Now --</p> <p>12 A. To my knowledge.</p> <p>13 Q. Thank you. Do you do punch cards at work?</p> <p>14 A. No.</p> <p>15 Q. What did you do to check out of work that</p> <p>16 day?</p> <p>17 A. You just let your boss know that you're going</p> <p>18 to be leaving at a certain time.</p> <p>19 Q. And you did that.</p> <p>20 A. Yes.</p> <p>21 Q. And do you remember telling your boss you</p> <p>22 were leaving?</p> <p>23 A. Yes.</p>



<p style="text-align: right;">53</p> <p>1 Q. Do you remember leaving?</p> <p>2 A. Yes.</p> <p>3 Q. Do you remember driving home?</p> <p>4 A. Yes, to a certain point.</p> <p>5 Q. What point was that?</p> <p>6 A. When I was leaving, the first thing I noticed</p> <p>7 is when I walked outside I immediately started</p> <p>8 sweating. And the next thing you know it was coming</p> <p>9 down like I was in a shower, and what is going on?</p> <p>10 What is this?</p> <p>11 So I got in the car and I just wiped it</p> <p>12 off and just continued to drive towards home and the</p> <p>13 appointment near home.</p> <p>14 Q. Did you use the air conditioner in the car?</p> <p>15 A. That started to cross my mind when I got --</p> <p>16 Being my daughter's car and not familiar and so</p> <p>17 forth -- it's kind of an old model -- I wasn't even</p> <p>18 sure if it even worked. I didn't know.</p> <p>19 But when I got to Route 13 and turned on</p> <p>20 to 13, I started to think about using it at that</p> <p>21 point because the sweating was not stopping.</p> <p>22 Q. Were you driving with the windows down prior</p> <p>23 to the point where you considered using the air?</p>	<p style="text-align: right;">55</p> <p>1 Q. Do you recall anything about your encounters</p> <p>2 with a female Townsend officer who is now a</p> <p>3 defendant, Mary Anne Kinirey, that day?</p> <p>4 A. After the police station, yes. At the</p> <p>5 hospital.</p> <p>6 Q. With that in mind, let me be a little more</p> <p>7 precise. Do you recall being initially approached by</p> <p>8 Officer Kinirey?</p> <p>9 A. No.</p> <p>10 Q. Do you recall any discussion that you had</p> <p>11 with her at the roadside before you were brought to</p> <p>12 the police station?</p> <p>13 A. No.</p> <p>14 Q. Do you recall getting out of your car?</p> <p>15 A. No.</p> <p>16 Q. Do you recall any physical touching between</p> <p>17 yourself and Officer Kinirey?</p> <p>18 A. No.</p> <p>19 Q. Do you have any memory -- Strike that. Have</p> <p>20 you ever read the police report about this encounter?</p> <p>21 A. Yes.</p> <p>22 Q. And based on that, is it your understanding</p> <p>23 that Officer Kinirey indicated that there was a</p>
<p style="text-align: right;">54</p> <p>1 A. The last I remember, the window was down on</p> <p>2 my side that I remember.</p> <p>3 Q. Do you have any memory of closing the window?</p> <p>4 A. None.</p> <p>5 Q. Do you have any memory of turning on the air?</p> <p>6 A. I don't believe I ever turned it on.</p> <p>7 Q. Now, at some point do you remember pulling</p> <p>8 your car off to the side of Route 13?</p> <p>9 A. No.</p> <p>10 Q. What is the last thing you remember in terms</p> <p>11 of your trip to the doctor's office that day? Strike</p> <p>12 that. Let me ask you a different question.</p> <p>13 A. I was going to answer it if you wanted.</p> <p>14 Q. It wasn't so bad when I think about it, so</p> <p>15 I'll restate it. What is the last thing you remember</p> <p>16 in terms of your trip to the doctor's that day?</p> <p>17 A. The last thing I remember is putting my head</p> <p>18 back and trying to take a deep breath. And then as I</p> <p>19 was trying to relax so to speak, that's all I</p> <p>20 remember was a deep breath. That's all I remember.</p> <p>21 Q. Do you recall pulling the car off to the side</p> <p>22 of the road?</p> <p>23 A. No.</p>	<p style="text-align: right;">56</p> <p>1 physical encounter between her and you on the</p> <p>2 roadside of Route 13?</p> <p>3 A. I remember her stating something in that</p> <p>4 report in regards to that, yes.</p> <p>5 Q. Are you able from your own personal memory to</p> <p>6 deny or rebut Officer Kinirey's version of events as</p> <p>7 set forth in that report?</p> <p>8 A. I have no memory of any of the incident.</p> <p>9 Q. I appreciate that. I'll stick with it just</p> <p>10 for a moment more if I could.</p> <p>11 A. Yes.</p> <p>12 Q. Do you have any memory of being handcuffed?</p> <p>13 A. No.</p> <p>14 Q. Do you have any memory of the arrival of a</p> <p>15 second officer at roadside?</p> <p>16 A. No.</p> <p>17 Q. Do you have any memory of being transported</p> <p>18 to the police station?</p> <p>19 A. No.</p> <p>20 Q. Do you have any memory of verbally insisting</p> <p>21 to Office Kinirey that you had to get going?</p> <p>22 A. No.</p> <p>23 Q. Do you recall any discussion concerning a</p>

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1 Breathalyzer at the police station?

2 A. Yes.

3 Q. What do you recall of that discussion?

4 A. I was at the police station. Well, I

5 remember this from everything coming into focus.

6 There was four officers, four police officers. I was

7 sitting down and they were all huddled in front of me

8 basically screaming at me.

9 Q. What were they saying?

10 A. You keep thinking you're in New Hampshire.

11 You keep thinking you're at work. You keep thinking

12 this. You know. Are you with us?

13 And they kept all coming at me at one

14 time with a lot of questions basically like, Where do

15 you -- you know -- What are you thinking and why are

16 you doing this or doing that?

17 I was very confused, and the only thing

18 I was trying to ask them is, What happened? They

19 said, Never mind what happened. We want you to take

20 a Breathalyzer and every time you say you understand

21 this and this and that, you drift off again.

22 And they asked again, Do you understand

23 what we're saying? I said, Yuh, I do, but what

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1 happened here? What's going on? And they again

2 said, Never mind. And the next thing was I agreed,

3 Yes, I'll take the Breathalyzer.

4 Q. At any point do you recall providing the

5 officers with your wife's name as a contact?

6 A. No.

7 Q. Would it be fair to characterize -- Strike

8 that. Did any officer that you remember say

9 something to the effect or ask you something to the

10 effect, What's wrong with you?

11 A. I would assume that was asked, yes.

12 Q. Do you remember at any point declining to

13 take a Breathalyzer?

14 A. No. I was completely complying. As a matter

15 of fact, when I blew that first time into the

16 Breathalyzer, the next thing I heard -- and it was

17 dead silence -- was zero. And after that, Blow it

18 again, which I complied and did.

19 Q. Did you speak with your wife from the police

20 station at any point that day?

21 A. No. Not that I remember there, no.

22 Q. Do you remember any officer telling you that

23 they had spoken with your wife?

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1 A. It's a little confusing still, no, not that I

2 remember.

3 Q. Now, as of June 15, 2001, is it accurate to

4 say your wife was a nurse?

5 A. Yes.

6 Q. And at that point was she working at U Mass.

7 Medical Center?

8 A. Yes. I believe someone called her and

9 alerted her to the fact that Tim had been arrested

10 and he was at the police station. And she in turn

11 called my brother-in-law Roy Bourque of Westminster,

12 Mass. to inform him of it, who was a good friend of

13 the family.

14 Q. What is the source of that belief?

15 A. This was after the fact I heard all this.

16 Not at the time.

17 Q. Did Mr. Bourque have any encounter with you

18 that day?

19 A. No.

20 Q. Did he have any encounters with the police to

21 your knowledge?

22 A. Yes.

23 Q. When did that take place and how did it take

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1 place?

2 A. From what I was told after, he was talking

3 with my wife and the police at the same time and

4 trying to help out.

5 Q. Has he ever told you about any discussion he

6 had with the police?

7 A. Yes.

8 Q. What did -- To whom did he say he spoke, if

9 you recall?

10 A. I was never really given a name.

11 Q. But he told you he'd spoken with some police

12 official, correct?

13 A. Yes.

14 Q. What did he tell you he had said to that

15 person and the person had said to him?

16 A. He was trying to explain to them -- The way I

17 remember hearing some of it is that Tim is not a

18 violent person first of all. This isn't him.

19 Something's wrong. Trust me on this.

20 And then one of the responses back I

21 believe he had said to me was that that person stated

22 that this should have never happened, meaning

23 whatever.

<p style="text-align: right;">61</p> <p>1 Q. Do you have any memory of being taken to</p> <p>2 Leominster Hospital from the Townsend police station?</p> <p>3 A. Yes.</p> <p>4 Q. And were you taken in an ambulance?</p> <p>5 A. Yes.</p> <p>6 Q. Did you have any discussions with any EMTs or</p> <p>7 paramedics involved with the ambulance that you</p> <p>8 remember?</p> <p>9 A. I was basically quiet.</p> <p>10 Q. Do you have any memory of their conducting</p> <p>11 any tests on you?</p> <p>12 A. They were taking vitals at that point I</p> <p>13 believe. Blood pressure and so forth.</p> <p>14 Q. By the way, just to backtrack, I think you</p> <p>15 did indicate that you had no memory of the arrival of</p> <p>16 a second officer at the spot where you had stopped</p> <p>17 your car, is that true?</p> <p>18 A. No memory.</p> <p>19 Q. Again, given that, it is fair to say, is it</p> <p>20 not, that from your own personal memory you are</p> <p>21 unable to deny or rebut the version of events that</p> <p>22 that officer, Officer Morrison, recently provided</p> <p>23 under oath?</p>	<p style="text-align: right;">63</p> <p>1 second blow into the Breathalyzer it got extremely</p> <p>2 quiet and the officers were quiet and just standing</p> <p>3 there.</p> <p>4 And then all of a sudden somebody else</p> <p>5 came around the corner and approached me and said,</p> <p>6 Sir, would you like to go to the hospital? And I</p> <p>7 said, Yes, I would. I believe something is wrong</p> <p>8 here and I'd like to be seen. And he said, Yes,</p> <p>9 we're going to call an ambulance.</p> <p>10 Q. Can you describe physically the officer who</p> <p>11 asked you that question?</p> <p>12 A. I can't.</p> <p>13 Q. Was he polite to you in making that question?</p> <p>14 A. It was pretty amazing as far as the way I was</p> <p>15 being treated versus his so-called politeness.</p> <p>16 Q. Well, I'll give you a chance to explain that</p> <p>17 but was he polite to you?</p> <p>18 A. At that point, yes.</p> <p>19 Q. Is your first memory today being seated in</p> <p>20 the police station with certain officers standing</p> <p>21 around you?</p> <p>22 A. Yes. That's when everything came into focus</p> <p>23 at that police station with those four officers in my</p>
<p style="text-align: right;">62</p> <p>1 A. Yes.</p> <p>2 Q. Okay.</p> <p>3 MR. GALLAGHER: Objection to that.</p> <p>4 THE WITNESS: I don't know if it --</p> <p>5 MR. GALLAGHER: I'm just saying he has no</p> <p>6 idea what he said.</p> <p>7 MR. TEHAN: That's a good point.</p> <p>8 Q. Do you have any memory of any encounter</p> <p>9 between yourself --</p> <p>10 A. That's what I thought you were asking.</p> <p>11 Q. Should have. Do you have any memory of any</p> <p>12 encounter between yourself and any police officer at</p> <p>13 the side of Route 13 on June 15, 2001?</p> <p>14 A. No.</p> <p>15 Q. Do you have any memory of your ambulance</p> <p>16 being followed by a police cruiser?</p> <p>17 A. I thought I heard a siren but I don't know if</p> <p>18 it was the ambulance, now that you're asking this</p> <p>19 question, or a cruiser or being followed. I don't</p> <p>20 remember.</p> <p>21 Q. Did you have an understanding as to why you</p> <p>22 were going to the hospital?</p> <p>23 A. Yes, because at the police station after the</p>	<p style="text-align: right;">64</p> <p>1 face.</p> <p>2 Q. When you say focus, are you referring to a</p> <p>3 mental focus, a visual focus?</p> <p>4 A. Visual and mental, total. Just like a</p> <p>5 picture. Boom. Here I am. (Indicating.)</p> <p>6 Q. Do I understand that as you sit here today</p> <p>7 and reflect upon that moment in time, you have some</p> <p>8 concerns about the way you were treated?</p> <p>9 A. Yes.</p> <p>10 Q. What were those concerns? What are those</p> <p>11 concerns? What happened?</p> <p>12 A. Well, when I'm sitting there it was amazing</p> <p>13 to me coming out of this so-called state of mind that</p> <p>14 I don't remember anything. And the next thing you</p> <p>15 know, you're sitting there with four people screaming</p> <p>16 at you.</p> <p>17 And first of all, I had no idea why they</p> <p>18 were screaming at me, and I had to piece together all</p> <p>19 this. The only thing I was asking them is, Can you</p> <p>20 tell me what's going on? Can you explain it to me?</p> <p>21 All I could think about by seeing the</p> <p>22 police like this in this situation is that I hope I</p> <p>23 didn't hurt anybody or do anything wrong here. I was</p>



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1 extremely, extremely in shock and upset.  
2 And I just wanted a little compassion  
3 for a second just to alleviate something and show  
4 them that, yes, I do understand the question; yes, I  
5 am seeing you; yes, I understand you; yes, I will  
6 take the Breathalyzer.  
7 But it was such a sporadic, you know,  
8 demand, and I just couldn't collect myself to give  
9 them everything all at once. I wanted some questions  
10 answered too if it was okay but --  
11 Q. I understand.  
12 A. It's an emotional feeling I think.  
13 Q. To jump ahead just for a moment, after your  
14 evaluation at the hospital did Officer Kinirey at  
15 your request tell you what had happened?  
16 A. She never really told me directly as far as a  
17 long conversation. There was bits and pieces. She  
18 was mentioning to me that it was quite the scene,  
19 whatever that meant.  
20 I think she explained a little bit as  
21 far as they had to block the road, they had to stop  
22 all traffic, they had to do this, that.  
23 And I was just like in shock still

1 Leominster Hospital?  
2 A. Yes.  
3 Q. -- that day, June 15, 2001, suggest to you  
4 that you were dehydrated?  
5 A. I don't remember them saying anything. It  
6 was just my assumption that obviously I was.  
7 Q. Did you have any discussion with any medical  
8 personnel that day as to the results of their  
9 examination of you?  
10 A. The only thing I remember is the doctor  
11 coming in -- Officer Kinirey was there, the nurse was  
12 there, and I was on the bed, and my son standing out  
13 in the hall -- was him saying, I can't find anything  
14 wrong at this point.  
15 And he all of a sudden said, I know what  
16 it is. It's speed. And I immediately looked at him  
17 and said, I don't take drugs and I don't take speed.  
18 The only thing I've been taking in the past week is  
19 stuff for my cold, Vick's Nyquil gelcaps or whatever  
20 they were called. He said, Oh, that will do it.  
21 Pseudophedrine.  
22 Q. The last --  
23 A. Pseudophedrine I believe he said.

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1 trying to piece together all this, but I just  
2 couldn't remember any of this stuff.  
3 And then she mentioned -- I asked her  
4 about why I'm so sore, why are my legs like really --  
5 I'm hurting everywhere. And she said she had to use  
6 the nightstick on me to get me down.  
7 And it's just like a lot of those  
8 questions were coming together little by little, you  
9 know, at the hospital.  
10 Q. And I'll get back to that in a moment. Do  
11 you recall being evaluated in the hospital?  
12 A. Yes. I was -- Go ahead. I'm sorry.  
13 Q. Do you recall who evaluated you?  
14 A. The doctor's name I do not recall. But I  
15 just remember being on the bed and they hooked me up  
16 to an IV which a nurse -- I assume a nurse was  
17 hooking me up to an IV, and that immediately felt  
18 like cold water rushing through my entire body and  
19 feeling much better all of a sudden.  
20 And I never really saw the doctor  
21 himself. Basically I just talked to the nurse and  
22 she said to, Just relax, honey, and you'll be okay.  
23 Q. Did any medical personnel -- and that was at

1 Q. When he said the word speed, that's slang for  
2 amphetamines, is that correct?  
3 A. I believe that's what he was accusing me of  
4 at that point. Taking drugs.  
5 Q. And is it your memory that the doctor in the  
6 emergency room, when you told him you had been taking  
7 the Nyquil, stated that the contents of that drug  
8 could explain your behavior? Is that a fair  
9 statement of --  
10 A. No, I don't --  
11 Q. I'll give it to you a little clearer. Please  
12 tell me once again, what did the doctor say in the  
13 emergency department in terms of a possible link  
14 between the Nyquil and your behavior?  
15 A. He never said anything that I remember.  
16 Q. Did you say a moment ago that he said  
17 something to the effect that that might be it?  
18 That's what I'm following up on.  
19 A. I'm not following the question I believe.  
20 Q. I'm sorry. We'll go back to square one.  
21 A. Right.  
22 Q. At some point after your examination at the  
23 hospital was complete there was a discussion at which

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1 yourself, Officer Kinirey, and the examining  
 2 physician were present, correct?  
 3 A. Yes.  
 4 Q. Forgive me for this but tell me again front  
 5 to back what the doctor said at that point.  
 6 A. All I remember is the doctor came in and he  
 7 says, I can't find anything wrong. Something to that  
 8 effect. And then he stopped for a second; I know  
 9 what it is. It's speed.  
 10 He said it in a derogatory way as far as  
 11 I was concerned. And also at that point I did have a  
 12 flash, mental flash, where I was thinking to myself,  
 13 This is a weird situation because is there anybody  
 14 here that wants to protect and serve and help me? I  
 15 mean, guys, what is this all about?  
 16 It's like thank God it wasn't in a town  
 17 in the olden days and, you know, I stole a horse or  
 18 something and there was a tree around. I hate to say  
 19 it this way but that's the feeling I was getting.  
 20 Anyways, to get back to it, that's  
 21 basically what he had said. And then my response  
 22 back to him immediately was, I don't take drugs and I  
 23 don't take speed or any of whatever you're saying.

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1 And he said, Oh, pseudophedrine, that  
 2 will do it, after I had mentioned the Vick's Nyquil.  
 3 Q. Thank you. Did Officer Kinirey make any  
 4 response or comments after the doctor spoke?  
 5 A. The only response I saw in her was she lit up  
 6 like -- I'll describe it like a Christmas tree when  
 7 he said that.  
 8 Q. What does to light up mean?  
 9 A. Her eyes and her emotions and her attention  
 10 immediately became more attentive for a second. And  
 11 she looked at him -- When he said -- basically was  
 12 talking -- I know what it is, it's speed, she seemed  
 13 to what I describe as light up.  
 14 Q. Did she say anything?  
 15 A. No. I don't believe there was anything said  
 16 because right after he said it I said, I don't take  
 17 drugs, and so forth like I had stated.  
 18 And then when he said, Oh,  
 19 pseudophedrine, that will do it, she immediately --  
 20 back to her regular look so to speak. (Indicating.)  
 21 Q. Your son was at the hospital?  
 22 A. Yes.  
 23 Q. Do you recall when he arrived?

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1 A. Oh, yes.  
 2 Q. Where were you when he arrived?  
 3 A. I was in the room and he was out by --  
 4 adjacent to the door of the room I was in, talking to  
 5 Officer Kinirey.  
 6 Q. Now, you're referring to an examination room?  
 7 A. Yes.  
 8 Q. Do you know how your son knew where to find  
 9 you?  
 10 A. I don't know.  
 11 Q. What is your boy's name?  
 12 A. Keith  
 13 Q. And where does Keith live now?  
 14 A. Right now he's living in Uxbridge, Mass.  
 15 Q. Do you know his street address?  
 16 A. I don't.  
 17 Q. With whom does he live there?  
 18 A. He's living with his wife's mother right now.  
 19 They're in transition of finding a new home. They  
 20 sold their other home.  
 21 Q. Keith is how old today?  
 22 A. About 29.  
 23 Q. Did your son -- Did Keith enter your room to

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1 greet you when he arrived at the hospital?  
 2 A. I believe he did.  
 3 Q. Do you remember anything he said to you or  
 4 that you said to him?  
 5 A. I kept telling him, Keith, it's okay. I'm  
 6 fine. I'll be all right. Because I could see that  
 7 he was very, very concerned and he just seemed very  
 8 upset for some reason because he was detecting, from  
 9 what I could see from a distance, some attitude from  
 10 Officer Kinirey.  
 11 Because when he was trying to ask her  
 12 questions relative to the situation like, What  
 13 happened, can you explain to me anything, her  
 14 response to all this was basically, You got the  
 15 money? You got the money for the bail? That's all I  
 16 want. You got the money or not?  
 17 And he says, Is that an issue right now?  
 18 Can I find out exactly what happened to my dad here?  
 19 Look at him. He does not look good at all.  
 20 And I kept trying to yell out to Keith,  
 21 Keith, relax. Take it easy. I'm okay. Relax.  
 22 Basically that was it.  
 23 Q. Thank you. Let me backtrack and try to be

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1 precise with you if I could. The initial question  
2 was do you remember any discussion that you had with  
3 Keith in the room.  
4 A. That was my discussion.  
5 Q. That you were reassuring him that things were  
6 okay?  
7 A. Reassuring him that everything was okay.  
8 Q. When you say your son seemed upset and  
9 concerned, did he appear angry to you?  
10 A. Not angry. Just confused. Very confused  
11 over the situation.  
12 Q. Now, did you overhear any discussions between  
13 Keith and Officer Kinirey while you were in the  
14 examination room?  
15 A. No. No.  
16 Q. How is it then that you just testified that  
17 there was a discussion about money?  
18 A. That was loud. They were yelling at that  
19 point.  
20 Q. So did you hear any portion of the discussion  
21 between Kinirey and Keith?  
22 A. That part, yes.  
23 Q. State it for the record, please, what you

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1 heard.  
2 A. I heard my son talking to Kinirey in regards  
3 to he was asking her questions over what happened.  
4 And her response to him was, Do you have the money?  
5 And that's all I remember at that point  
6 basically. And I kept reassuring my son that  
7 everything was okay.  
8 Q. Has Keith at any later time told you anything  
9 additional that he and Officer Kinirey discussed?  
10 A. I don't remember at this point if he ever  
11 said anything.  
12 Q. Did you hear raised voices?  
13 A. It seemed to be getting at that point.  
14 Q. On both the part of your son and Officer  
15 Kinirey?  
16 A. From what I could detect, she was raising her  
17 voice and he was pleading with her in some way. They  
18 were just gesturing at that point at each other.  
19 And I'm not sure exactly. I couldn't  
20 hear everything. I was being attended to and so  
21 forth.  
22 Q. Did you overhear any discussion between your  
23 son and Officer Kinirey concerning whether or not he

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1 could take you home directly from the hospital?  
2 A. No. That was after they released me. I  
3 started to come out of the room slow but sure and he  
4 thought I was going to be able to go home.  
5 But she started to explain to him, I  
6 believe, that, No, he's under arrest. He's going  
7 back to the police station.  
8 And he was asking if it was -- Is this  
9 necessary? Look at him. Look at his condition. He  
10 can't even walk.  
11 And she proceeded to put the cuffs on me  
12 and he says, Is this necessary? Is this really  
13 necessary? Please. Please. And I couldn't even get  
14 in the police cruiser because my legs weren't  
15 functioning at all, but I did eventually get them  
16 into the cruiser and he followed us back to the  
17 station.  
18 Q. Okay. Were you prescribed any medications  
19 upon discharge from the emergency room that day?  
20 A. No. Just to follow up with fluids and see my  
21 doctor.  
22 Q. And did you see your doctor as follow-up?  
23 A. I believe -- Yes. That was a couple days

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1 later.  
2 Q. What doctor was that, sir?  
3 A. Dr. Thomas Scornavacca, Fitchburg, Mass.  
4 Q. Now, if you can do this, distinguishing the  
5 examination that was done of you at the hospital  
6 which led the doctor to initially say he couldn't  
7 find anything wrong, do you recall whether any  
8 treatment of any type was given to you at the  
9 hospital apart from the IV?  
10 A. I don't recall any other treatment but the  
11 IV.  
12 Q. Okay. Now, were you handcuffed in the  
13 examination room?  
14 A. No.  
15 Q. Were both hands free?  
16 A. I believe so, yes.  
17 Q. After your examination was concluded was it  
18 at that point that the discussion between -- the  
19 discussion at which you, Kinirey, and the doctor were  
20 present occurred?  
21 A. Could you ask that one again?  
22 Q. Sure.  
23 A. I'm trying to think of the exact times.



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1 enlightened me with I believe.  
 2 Q. Is it fair to say that when you were asked  
 3 whether the officers involved with you had used  
 4 excessive force, that you did not claim at that point  
 5 that they had done so? Is that true?  
 6 A. I had no memory that they did.  
 7 Q. Okay.  
 8 A. No memory.  
 9 Q. Who paid the bail?  
 10 A. I believe my son had the money.  
 11 Q. How much was it, do you recall?  
 12 A. I don't recall, sir.  
 13 Q. How and when were you told that you would  
 14 have to go to court over this matter?  
 15 A. I can't remember exactly. I believe they  
 16 gave me the paperwork, something associated with it,  
 17 and some officer had maybe mentioned something. I  
 18 don't remember for sure because I was, like I say,  
 19 very sick and tired. I just needed to go home and  
 20 lay down.  
 21 Q. How did you get home?  
 22 A. My son took me.  
 23 Q. Did you learn that your car had been towed?

1 which appears on page 4 there's a reference that you  
 2 -- that there were lawyer fees of \$2,000, is that  
 3 true?  
 4 A. Right.  
 5 Q. Did you actually pay McEvilly \$2,000?  
 6 A. Yes.  
 7 Q. Now, after June 15 do I understand correctly  
 8 that several days later you saw your primary care  
 9 physician?  
 10 A. Um-hmm.  
 11 Q. Is that true?  
 12 A. Yes.  
 13 Q. And did you make any specific complaints  
 14 about any physical ailments to that doctor?  
 15 A. I had mentioned about the knees, the legs,  
 16 the swelling, the bruising all over the body, the  
 17 wrists numb and sore, and tingling in the thumb, of  
 18 just being very, very sore everywhere in regards to  
 19 all -- head to toe type of thing.  
 20 Q. Did the doctor provide any treatment for  
 21 those complaints?  
 22 A. No.  
 23 Q. Did you also discuss with the doctor --

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1 A. At that point I don't remember that. I  
 2 didn't ask anything.  
 3 Q. Who picked your car up or your daughter's car  
 4 up?  
 5 A. I have no idea. I believe, if I remember, it  
 6 was towed. So they had it impounded maybe.  
 7 Q. Eventually your daughter got her car back,  
 8 correct?  
 9 A. Yeah, she got it back. I didn't know all the  
 10 details involved in that.  
 11 Q. At some point did you make a decision to  
 12 engage a lawyer in connection with the criminal  
 13 charges against you?  
 14 A. Yeah. I had no choice.  
 15 Q. I understand. Whom did you engage?  
 16 A. McEvilly out of Leominster, Mass.  
 17 Q. What is that person's first name?  
 18 A. I just know him as McEvilly at this point.  
 19 Q. Why was it that you chose that particular  
 20 attorney?  
 21 A. He's a friend of the family. My wife's side.  
 22 Her sisters.  
 23 Q. And in your answer to interrogatory number 7

1 Strike that. Is it fair to say that at the time you  
 2 saw your doctor -- and forgive me. This one is what  
 3 name please?  
 4 A. Doctor Scornavacca, my primary in Leominster.  
 5 Q. Would it be fair to say when you saw Doctor  
 6 Scornavacca you were also very concerned about your  
 7 memory lapse?  
 8 A. We were both concerned.  
 9 Q. The doctor as well.  
 10 A. Yes, he was concerned.  
 11 Q. Had you ever gone through a situation of a  
 12 blackout or loss of memory such as this prior?  
 13 A. No. Never in my life.  
 14 Q. Have you ever since?  
 15 A. No. I've never been that sick either that I  
 16 remember.  
 17 Q. I understand. What did you tell your doctor  
 18 in terms of your concerns about the memory issue?  
 19 A. We discussed it a little bit and he said,  
 20 Believe it or not, sometimes these things do happen.  
 21 And that's basically what I remember about the  
 22 conversation. It wasn't really at any length.  
 23 Q. Did Doctor Scornavacca -- Strike that. At

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1 the time that you saw him several days after your  
 2 arrest you didn't, and to this day don't, have a  
 3 personal memory of the arrest, correct?  
 4 A. Correct.  
 5 Q. Did you get the police report to at least  
 6 learn the police version of events?  
 7 A. Absolutely.  
 8 Q. When did you do that?  
 9 A. I knew you were going to ask that but I can't  
 10 remember exactly when this was given to me. It was  
 11 at some point -- It was -- I got ahold of it.  
 12 Q. Was part of the reason you did that to assist  
 13 in the preparation of your criminal defense?  
 14 A. No. No. Not at all. I had no intentions of  
 15 any kind of like defending thing. I was still at the  
 16 point where in my mind, in my belief, they made a  
 17 mistake and they were going to just let it go or  
 18 something. And then it got to be really serious and  
 19 so forth.  
 20 Q. Did you ever present for review by a doctor  
 21 the police report?  
 22 A. Yes. I showed it to my primary, Doctor  
 23 Scornavacca.

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1 Q. And was your purpose in doing that to say,  
 2 Look at what they said I did, how did this happen, or  
 3 something to that effect?  
 4 A. Yes.  
 5 Q. And when you said earlier that he made a  
 6 comment to the effect that, Believe it or not  
 7 sometimes these things happen, was that after you  
 8 reviewed the report with him?  
 9 A. I can't remember now which one was first.  
 10 Q. In any event, this case proceeded to court,  
 11 did it not?  
 12 A. Yes.  
 13 Q. And was it Ayer District Court?  
 14 A. Yes.  
 15 Q. Is it your understanding as you sit here  
 16 today that the prosecution involved two counts of  
 17 assault and battery on a police officer, those being  
 18 Officer Kinirey and Officer Morrison, disorderly  
 19 conduct, and resisting arrest?  
 20 A. Sounds right, yes.  
 21 Q. And you'd agree with me that a charge of  
 22 operating under the influence was never filed in  
 23 court against you as a result of the arrest on June

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1 15, 2001.  
 2 A. Could you ask that one again?  
 3 Q. Sure. Let her read it back.  
 4 A. Because I'm trying to remember all this and I  
 5 don't have anything in front of me.  
 6 MR. TEHAN: If it doesn't make sense I'll  
 7 try again.  
 8 Q. (The question was read by the Court  
 9 Reporter.)  
 10 A. I'm trying to remember -- if I can see the  
 11 paperwork in front of me -- what the exact charges  
 12 were. I remember the assault charges and everything,  
 13 but the driving under the influence I can't -- I  
 14 think that -- I don't know if that was there. I  
 15 don't know.  
 16 Q. The trial was a bench trial, is that true,  
 17 not involving a jury?  
 18 A. Right.  
 19 Q. Was it before Judge Gilmartin?  
 20 A. That sounds familiar.  
 21 Q. Was the trial held on March 4th, 2002?  
 22 A. I believe so. I'm getting a cramp in my leg,  
 23 sir.

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1 MR. TEHAN: Off for a second.  
 2 (Discussion off the record.)  
 3 (Whereupon at 11:50 a.m. the deposition recessed and  
 4 reconvened at 12:22 p.m.)  
 5 Q. Would it be fair to say that you did not  
 6 testify at the trial?  
 7 A. I didn't.  
 8 Q. Were you present at the trial?  
 9 A. Yes.  
 10 Q. And is it fair to say that the only witness  
 11 for the Commonwealth was Officer Kinirey?  
 12 A. Yes.  
 13 Q. Did you understand the defense to be  
 14 presented -- Did you understand the defense that was  
 15 presented on your behalf in open court that day by  
 16 your attorney to be that you lacked the necessary  
 17 intent or criminal intent which was required in order  
 18 to find you guilty of the crimes in which you were  
 19 charged?  
 20 MR. GALLAGHER: Objection to the form of  
 21 that.  
 22 Q. If you follow it you may answer, sir.  
 23 MR. GALLAGHER: Yes.

<p style="text-align: right;">105</p> <p>1 suspended or revoked?</p> <p>2 A. It was never suspended.</p> <p>3 Q. Let me ask you, sir, to review interrogatory</p> <p>4 number 8 and your response to that interrogatory.</p> <p>5 And when you've done that, let me know and I'll ask</p> <p>6 you some further questions.</p> <p>7 A. Okay.</p> <p>8 Q. I'm going to read into the record the</p> <p>9 question, and when I've done so would you confirm</p> <p>10 please that I did that accurately?</p> <p>11 A. Yes.</p> <p>12 Q. Interrogatory number 8 states, Please set</p> <p>13 forth in full and complete detail the nature and</p> <p>14 extent of all injuries physical, emotional or mental</p> <p>15 in nature allegedly suffered by you as a result of</p> <p>16 the occurrences set forth in the complaint, including</p> <p>17 in your response, A, the name and address of each</p> <p>18 hospital, medical professional, and mental health</p> <p>19 professional which rendered treatment to you,</p> <p>20 providing a complete description of the treatment you</p> <p>21 received and the inclusive dates thereof, and, B, the</p> <p>22 dates between which you were absent from your</p> <p>23 employment and your school as a result of the</p>	<p style="text-align: right;">107</p> <p>1 the thumbs. Again I would ask you did you take any</p> <p>2 medical treatment for numbness in thumbs?</p> <p>3 A. No, but I believe it was associated to the</p> <p>4 wrist problem also.</p> <p>5 Q. I understand. Did it resolve within the same</p> <p>6 time frame?</p> <p>7 A. They all seemed to subside in their own way.</p> <p>8 Not really all at once. Within time the wrists</p> <p>9 started to feel better, the feeling started to come</p> <p>10 back in the thumb areas and hand.</p> <p>11 But it was almost like your strength was</p> <p>12 affected, too, because it was so numb you had no idea</p> <p>13 and the pain at first that it started out with.</p> <p>14 Q. I understand. Would it be accurate to say</p> <p>15 that the numbness in the thumbs and the loss of</p> <p>16 strength that you referred to, as well as the</p> <p>17 bruising and tingling of the wrists, resolved within</p> <p>18 a couple of months of your arrest?</p> <p>19 A. Within I'd say four months or less.</p> <p>20 Q. All right. You next reference arms and elbow</p> <p>21 pain with swelling and bruising, and I would ask you</p> <p>22 did you take any medical treatment for those</p> <p>23 conditions?</p>
<p style="text-align: right;">106</p> <p>1 occurrence as set forth in the complaint.</p> <p>2 Mr. LaFrenier, did I read the question</p> <p>3 accurately into the record?</p> <p>4 A. Yes.</p> <p>5 Q. And your response was, Wrists pain, including</p> <p>6 swelling, bruising, tingling, numbness in thumbs, and</p> <p>7 some loss of strength, arms and elbow pain with</p> <p>8 swelling and bruising, knee pain with swelling and</p> <p>9 bruising, jaw pain with tightness, possibly</p> <p>10 misaligned jaw, increased neck rigidity, ringing in</p> <p>11 the inner ear, likely bulging disc, overall joint and</p> <p>12 body aches with bruising.</p> <p>13 Again, sir, would you confirm that I</p> <p>14 read your answer into the record accurately?</p> <p>15 A. Yes.</p> <p>16 Q. Now, with respect to the wrists pain</p> <p>17 including swelling, bruising and tingling, did you</p> <p>18 receive any medical treatment for that condition?</p> <p>19 A. No.</p> <p>20 Q. And when did the wrists pain including</p> <p>21 swelling, bruising, and tingling end?</p> <p>22 A. It took months before it stopped.</p> <p>23 Q. The next thing you reference is numbness in</p>	<p style="text-align: right;">108</p> <p>1 A. When you say medical treatment, things like</p> <p>2 ibuprofen. I self-treated --</p> <p>3 Q. Okay.</p> <p>4 A. -- is what I'm saying.</p> <p>5 Q. Sure. I appreciate that.</p> <p>6 A. Taking ibuprofen in the morning, three, and</p> <p>7 three at night to get an antiinflammatory effect.</p> <p>8 Q. Apart from that and --</p> <p>9 A. No.</p> <p>10 Q. Conceding that that would be medical</p> <p>11 treatment of some type did you take any other</p> <p>12 treatment?</p> <p>13 A. No.</p> <p>14 Q. And how long did it take for the arms and</p> <p>15 elbow pain with swelling and bruising to resolve?</p> <p>16 A. It took a few months for that to get back to</p> <p>17 normal.</p> <p>18 Q. You next mention knee pain with swelling and</p> <p>19 bruising. And as I understood it, you took the</p> <p>20 ibuprofen for all your pains and aches, correct?</p> <p>21 A. Yes. Yes.</p> <p>22 Q. Apart from that did you take any medical</p> <p>23 treatment for knee pain with swelling and bruising?</p>



<p>121</p> <p>1 between Mr. Bourque and an officer of the Townsend 2 Police Department? 3 A. That's what I found out after, yes. 4 Q. After June 15th of 2001? 5 A. Yes. After that day I believe. 6 Q. And I believe you testified on direct 7 examination that the officer said, This should never 8 have happened. 9 A. Yes. 10 Q. To Mr. Bourque. 11 A. That's what Mr. Bourque had said to me. 12 Q. And what did you take that to mean? 13 MR. TEHAN: Objection. Irrelevant. You 14 can answer. 15 A. It was almost as if to say -- 16 Q. Just asking what you took it to mean. 17 A. That's what I'm getting at. What I took it 18 to mean is this whole incident, the arrest, and the 19 way they handled the whole situation was a screw-up 20 on their part and it never should have went down the 21 way it did. It was a simple distress call which 22 turned into a nightmare. 23 Q. At the trial, your trial in Ayer District</p>	<p>123</p> <p>1 some type. 2 Q. At the hospital did the doctor who treated 3 you rule out that you had been under the influence of 4 speed? 5 A. In my opinion, yes. 6 MR. TEHAN: I'll object. Move to strike. 7 Q. What do you base that opinion on? 8 A. Well, my answer alone to him is that I 9 thought he was talking drugs as in speed drugs, 10 illegal drugs, and I was only taking the required 11 amount of medication at night like I had stated, and 12 it's normal for people in my opinion to take that 13 and, yes, it does show up sometimes, the 14 pseudophedrine, I believe, in it. 15 Q. At some point in time after you were charged 16 with various counts here did you hear that there was 17 a possibility of a jail sentence on the charge of 18 assault and battery on a police officer? 19 A. Yes. I was thinking for a second. 20 Q. The answer is yes? 21 A. Yes. 22 Q. And you learned that from your trial counsel? 23 A. Yes.</p>
<p>122</p> <p>1 Court, was there any mention of whether or not there 2 was an ambulance at the scene on Route 13, Dudley 3 Road? 4 A. Yes. And that was my first time hearing it 5 actually. I had no idea that an ambulance had shown 6 up, but Mr. McEvilly my lawyer at the time was cross 7 examining Kinirey on the stand, and the next thing he 8 mentioned to her after the fact that -- he was asking 9 her if Tim was incoherent basically and he said, By 10 the way, who waved off the ambulance? And her 11 response was, He did. 12 Q. As a result of your examination at the 13 Leominster Hospital on June 15, 2001, did you learn 14 anything with regard to your white blood cell count 15 on that day? 16 A. Yes. It was noticed by a Doctor Parker in 17 Boston, who I had seen for another opinion in regards 18 to my Meniere's problem, that it was very important 19 that I mention to everyone -- which he thought was 20 extremely important -- that my white cell count was 21 17-nine, 17,900, and that normal was in the 5 to 8 22 range or something which I've been told. And that 23 constituted a viral -- a pretty serious infection of</p>	<p>124</p> <p>1 Q. And how did that affect your thinking when he 2 told you there's a possibility or the crime alleged 3 allows for the possibility of a judge sentencing you 4 to jail if you're convicted? 5 A. To be honest with you, I was very, very 6 scared and very upset, very emotional over it, 7 because I really deep down inside did not think that 8 they would actually push it that far and prosecute me 9 to that point. 10 Q. And talking to Doctor Scornavacca, would that 11 be within days of June 15, 2001? 12 A. Yes. 13 Q. And at some point did he say something to the 14 effect, Sometimes these things happen? 15 A. Yes. He did mention that to me. 16 Q. And in what context was that said? 17 A. Well, when I was talking to Doctor 18 Scornavacca about it and he could see I was a little 19 upset and nervous over it and worried over what 20 happened, he said, Tim, based on the situation at 21 hand, the Klonopin and the Vick's Nyquil, the cold, 22 the infection, the white blood cell count, and when 23 you add it all up, believe it or not, this sometimes</p>

## **EXHIBIT B**



TWIN CITY FAMILY PRACTICE

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August 20, 2001

TO WHOM IT MAY CONCERN:

RE: Timothy Lafrenier  
D/B: 12/18/53

Timothy Lafrenier with the above date of birth is a patient of mine who is very concerned with a most recently episode of confusion. Mr. Lafrenier was seen in the Emergency Dept. on 6/15/01 transported via ambulance from the Townsend Police Department for evaluation of disorientation. From the account from the officer, after reading the police report, it is very evident that Mr. Lafrenier was acutely disoriented and confused, completely unaware of the events of this episode and therefore had no awareness of his actions.

The weekend prior to this event Mr. Lafrenier was complaining of severe upper respiratory infection symptoms "of a head cold." He had voluntarily discontinued his Klonopin 1 mgs. twice a day, as he was concerned that the over-the-counter medications for his cold would interact with this. He stopped the Klonopin on that Sunday evening, had been taking Vicks NyQuil in heavy doses in order to feel better, and attempted to go to work on the day in question. He came home at noontime because of an appointment for medical evaluation for another problem, when this episode occurred.

After reviewing the medical history from the Emergency Department, including tests, both blood and urine, it is clear to me that he had an acute altered mental status unrelated to drug abuse or alcohol abuse. It is quite possible that a combination of discontinuing the Klonopin, as well as large doses of Vicks NyQuil which has heavy sedatives, could easily cause his confusion and somewhat combativeness. He was obviously disoriented, and quite possibly had fevers and chills during the several days prior. Mr. Lafrenier suffers from a disease called Meniere's disease which affects the middle ear on the left, causing ringing, and unsteadiness, and has been fully evaluated by an ENT specialist for this problem. The Klonopin is used to try and treat some of these symptoms, but has sedative effects as well. Acutely discontinuing this medication can cause somewhat of a withdrawal syndrome, which again may be contributing to this prior episode.

After knowing Mr. Lafrenier for nearly 1 year, it is obvious to me that he is not an overly aggressive man, and I cannot imagine that this combativeness was anything intentional. If you need any further information, I would be pleased to answer any questions you may have.

Sincerely,

Thomas J. Scornavacca, Jr., D.O.

TJS:an